In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1000

HAROLD A. BOIRE, REGIONAL DIRECTOR OF THE TWELFTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PILOT FREIGHT CARRIERS, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FURTHER SUPPLEMENTAL MEMORANDUM FOR THE REGIONAL DIRECTOR OF THE TWELFTH REGION OF THE NATIONAL LABOR RELATIONS BOARD

In our supplemental memorandum, we pointed out that the duration of an injunction issued under Section 10(j) of the National Labor Relations Act, 29 U.S.C. 160(j), is limited to the period preceding issuance by the Board of its final decision on the underlying unfair labor practice charges. Since the Board issued, on March 25, 1976, its final decision and order in this case, we noted that the question presented in the petition has become moot.

In response to this Court's request for the views of "adverse parties" to the government's supplemental memorandum, Teamsters Local 512—not a party to this litigation—has suggested that the case is not moot

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because at least one of the employers involved here, Pilot Freight Carriers, Inc., has refused to comply with the Board's order. But an employer's failure to comply with an order of the Board does not extend the period during which an injunction issued under Section 10(j) is effective. Indeed, the legislative history and policies relied upon by this Court in *Sears, Roebuck & Co.* v. *Carpet Layers, Local 419,* 397 U.S. 655, confirm that Section 10(j) of the Act—like Section 10(*l*)—was intended to supplement other remedies provided in the Act and that the relief available under Section 10(j) terminates when the Board has finally adjudicated the unfair labor practice question. If an employer refuses to comply with and order of the Board, such as that issued on March 25, 1976, the Board may petition under Section 10(e) of the Act, 29 U.S.C. 160(e), for enforcement of its order[1] and for any "temporary relief or restraining order" that it deems appropriate.

In support of the contention that Congress did not intend to limit the duration of injunctions issued under Section 10(j), Teamsters Local 512 asserts that the purpose of such injunctions was to protect "against traditional unfair practices which hit at the heart of the statute * * *" (Response, p. 7). In contrast, according to Teamsters Local 512, Congress felt it necessary to limit the duration of injunctions issued under Section 10(*l*) because of the danger that such injunctions "might chill the exercise of protected rights" (*ibid.*). But even assuming that the suggested policy distinction could have led Congress to provide for injunctions of different duration under Sections 10(j) and 10(*l*), the legislative

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[1]Indeed, on May 21, 1976, the Board filed such an enforcement petition. *National Labor Relations Board* v. *Pilot Freight Carriers, Inc.*, No. 76-2425 (C.A. 5).

history of those companion amendments to the Act does not contain any evidence that Congress did so or that it viewed differently the purposes of those amendments.

Respectfully submitted.

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JUNE 1976.

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